
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-03-AT-085
Palmetto Broadcasting Company, Inc.)	
Licensee of Radio Station WAIM and)	NAL/Acct. No. 200332480024
Owner of Unregistered Antenna Structure)	
Used at Radio Station WAIM)	
)	
Anderson, South Carolina)	
)	FRN: 0008-9109-45

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: May 7, 2003

By the, Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Palmetto Broadcasting Company, Inc., ("Palmetto"), licensee of AM radio station WAIM, Anderson, South Carolina, and owner of an unregistered antenna structure utilized by radio station WAIM, apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000) for willful and repeated violation of Sections 11.61(a) and 17.4(a) of the Commission's Rules ("Rules").¹ Specifically, we find Palmetto Broadcasting Company, Inc. apparently liable for failing to conduct tests of the Emergency Alert System ("EAS") and for failing to register its antenna structure.

II. BACKGROUND

2. On April 16, 2003, an agent from the FCC Enforcement Bureau's Atlanta Office conducted an inspection of WAIM's EAS installation and its antenna structure. No Antenna Structure Registration could be produced and a check of the FCC Antenna Structure Registration database confirmed that the structure was not registered. Palmetto is the owner of the antenna structure and the WAIM station license requires that the antenna structure be painted and lighted since it is over 200 feet tall.

3. An inspection of WAIM's EAS installation revealed that the station did not conduct either weekly or monthly EAS tests. When asked to produce station logs for the previous three months, station personnel could produce no records of any EAS tests or activations, reasons for failure to receive and conduct such tests, or any entries showing EAS equipment had been removed from service for repair. The station's general manager stated that he could not remember when the station had last conducted an EAS test.

¹ 47 C.F.R. §§ 11.61(a) and 17.4(a).

III. DISCUSSION

4. Section 11.61(a) of the Rules requires that broadcast stations conduct weekly and monthly tests of the EAS. On April 16, 2003, and for at least three months prior, station WAIM failed to conduct any EAS tests. The station's logs showed no evidence that the station conducted any of the required EAS tests or received any EAS activations, no entries explaining the failure to receive and conduct such tests or activations, and no entries showing EAS equipment had been removed from service for repair.² Section 17.4(a) of the Rules provides that the owner of an antenna structure that requires notice of proposed construction to the Federal Aviation Administration ("FAA") must register the structure with the Commission. Palmetto's antenna structure required notification to the FAA because the structure exceeded 200 feet in height.³ Therefore, Palmetto's antenna structure required Commission registration. As of April 16, 2003, Palmetto had failed to register its antenna structure used as part of station WAIM.

5. Based on the evidence before us, we find that Palmetto willfully⁴ and repeatedly⁵ violated Sections 11.61(a) and 17.4(a) of the Rules by failing to conduct required EAS tests and by failing to register its antenna structure.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amount for failure to file required forms or information to register the antenna structure is \$3,000, and for failure to conduct EAS tests (i.e., failure to make required measurements or conduct required monitoring) is \$2,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and applying the factors listed above, this case warrants a \$5,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Palmetto Broadcasting Company, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of five thousand dollars (\$5,000) for willful and repeated violation of Sections 11.61(a) and 17.4(a) of the Rules by failing to conduct EAS tests and by failing to register its antenna structure.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty

² EAS tests and activations, failure to receive such tests and activations, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.54(b)(12), 11.55(c)(7) and 11.61(b).

³ See 47 C.F.R. § 17.7(a).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2), which also applies to Section 503(b), provides: [t]he term "repeated", when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503 (b)(2)(D).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

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(30) days of the release date of this NAL, Palmetto Broadcasting Company, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of NAL under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Palmetto Broadcasting Company, Inc., 2203 Old Williamston Rd., Anderson, SC 29621.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director, Atlanta Office
Enforcement Bureau

¹⁰ See 47 C.F.R. § 1.1914.

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Attachment A